

CSS *Alabama* Wreck Protection Agreement

This agreement is made by and between the United States Navy, represented by the Naval Historical Center, hereinafter referred to as the "Navy," acting for the Government of the United States of America, owner of the *Alabama* wreck and its associated artifacts,

on the one hand,

and the Association CSS Alabama, a non-profit private-law association registered under the French Law of 1901, hereinafter referred to as the "Association,"

on the other hand,

and hereinafter together referred to as the "Parties" to this agreement.

Whereas the Government of the United States of America, as the successor State to the former Confederate States of America, is the owner of the wreck of the CSS *Alabama*, a Confederate warship sunk by the USS *Kearsarge* in battle off Cherbourg, France, on 19 June 1864, including its contents, apparel and equipment; and

Whereas this ownership was recognized by the government of the Republic of France in the Verbal Note No 2826 addressed to the Ambassador of the United States in France by the Ministry of Foreign Affairs, dated 18 October 1991; and

Whereas the Agreement signed by the United States of America and the Republic of France in Paris on 3 October 1989, a copy of which is attached as Exhibit A, hereinafter referred to as the "1989 Agreement," recognizes mutual national interests in this important heritage resource, and provides for the establishment of a Joint French-American Scientific Committee, hereinafter referred to as the "Committee," to make recommendations to the respective governments on the protection, the conditions of exploration and the scientific study of this wreck site in the historic and cultural interests of both nations; and

Whereas the above-mentioned 1989 Agreement recognizes that the wreck of the CSS *Alabama* resides within the territorial waters of the Republic of France and is therefore subject to French law, including regulations for the protection of historic shipwrecks and archaeological sites under laws administered by the French Ministry of Culture; and

Whereas a shipwreck was located by the French Navy's mine hunter *Circé* on 30 October 1984 and its identity later confirmed as that of CSS *Alabama* by Captain Max Guérout, French Navy; and

Whereas in 1988 the Association was founded as a non-profit organization and registered under the Law of 1901 for the purpose of conducting the scientific exploration and study of the CSS *Alabama* and its wreck site, in accordance with the laws of France governing underwater archaeology, and from 1988 to the present, has successfully financed, exclusively from French sources, and conducted seven annual investigations of the wreck and its immediate surroundings for the purpose of evaluating the archaeological potential of the site and undertaking excavation, thereby demonstrating its ability to carry out professional archaeological research on this difficult site; and

Whereas, as required by French law (Chapter IV of the Decree of 26 December 1961 and Article 9 of the Law 89-874 of 1 December 1989), the Association wishes to establish with the owner, represented by the U.S. Navy, an agreement on mutually acceptable operating principles by which the investigation of the wreck site can be continued and the development of its public and private funding pursued in the United States as well as in France and elsewhere; and

Whereas it is to the advantage of both the Association and the Navy to enter into an agreement recognizing their mutual interests in the wreck site, establishing an operating agreement by which the rights and responsibilities of the Navy and the Association are recognized, and recognizing as well the particular rights afforded to the Association's principal archaeologist; and

Whereas the Association recognizes its responsibility for its own work and actions performed on the *Alabama* wreck by persons intervening on the site on its behalf, and for objects removed from the site while in its custody, during field conservation treatment (Phases I and II of the conservation process; see Exhibit B) and until they have been transferred either to the owner or to the conservation laboratory designated by the owner. It may also help finance the cost of Phases III and IV of the conservation treatment performed in French laboratories when possible; and

Whereas the owner has recognized his responsibility for financing, to the extent that the necessary funds are available for this purpose, Phases III and IV of the conservation treatment of *Alabama* artifacts (see Exhibit B), in particular, but not exclusively, all such treatment performed in laboratories in the United States; and

Whereas the Navy, in addition to assuming its own administrative costs on behalf of the owner and the costs of conservation as indicated above, as well as ensuring the curation and security of the artifacts beginning with their transfer

to the United States, may also agree to fund a share of the costs of the archaeological project, and may contribute cash, in-kind services, or provide other resources agreed upon by the Parties, to the extent those resources are available; and

Whereas, under French law and regulations, the Association as operator must present to the Ministry of Culture its financial plan for the operations for which it requests an official permit, and assumes thereby the responsibility for seeking the funds necessary to carry out the proposed archaeological operations in accordance with requirements pertaining to the excavation and conservation of retrieved objects;

Now, therefore, the two Parties do mutually agree, as follows:

1. The study, management and protection of the CSS *Alabama* site is guided by the principle that the shipwreck is an important and unique part of both American and French naval history, of great mutual and international interest. Its exploration and study require the advice of the Committee. Considered to be a fragile, non-renewable heritage resource, the wreck is to continue to be studied in a manner consistent with its protection, insofar as its physical environment allows, for the present and for the future.
2. The government of the United States of American as owner of the wreck and the associated artifacts of the CSS *Alabama*, represented by the Navy, accredits the Association as operator of the *Alabama* archaeological project and recognizes its responsibility for the scientific study, research and management of this project, subject to official permits issued by the Ministry of Culture of France and to the Association's conformance with the terms of this agreement. In that capacity, the Association and its principal investigator are responsible for defining short and long-term research goals and for incorporating them into a research "design" for their investigation of the wreck. This research plan shall be addressed to the Committee for review and for recommendations to the Minister of Culture, the cognizant French authority. A copy shall be sent to the representative of the owner unless he is also a member of the Committee.
3. a) The Association, as the authorized operator, assumes the responsibility for its actions on, to, and from the CSS *Alabama* wreck site defined to be the remains of the ship and its associated artifacts, including the consequences of accidents involving personnel intervening on the site on

its behalf and under the authority of its principal investigator. For each campaign on the site, the Association shall subscribe, as in the past, an insurance policy covering civil responsibility claims resulting from actions of its personnel or of persons acting on its behalf and in accordance with instructions issued by its principal investigator. In the foregoing conditions, it hereby agrees not to hold the owner or his representatives liable for damages incurred by personnel or equipment.

b) If U.S. Navy equipment and/or personnel are designated to perform a specific service for the Association on the *Alabama* site, a particular contract shall be signed specifying the duration of and the conditions attached to the service to be rendered. The Association shall then subscribe a special insurance policy to cover the risks assumed under the terms of that particular contract.

c) When, in accordance with the terms of the 1989 agreement, United States observers are present on site (on the surface or underwater), the Navy assumes responsibility for their actions to the extent provided by applicable law.

4. The Navy has the responsibility, as representative of the owner, of funding its own administrative costs as well as those of Phases III and IV of the conservation treatment of *Alabama* artifacts, to the extent necessary funds are available for this purpose, and of their curation while in its custody. It may also agree to contribute to the costs of the archaeological exploration itself, as well as to provide services and rights as set for hereinafter.
5. The Association's prime responsibility is for the archaeological exploration of the site and the recovery of artifacts and material as approved by the Scientific Committee and the owner. It is also responsible for Phases I and II of the conservation process as defined above and consequently for the objects undergoing such treatment while in its custody. It may also attempt to fund or to obtain without cost to the owner Phases III and IV of the required conservation treatment, in particular when performed in French laboratories.
6. At its discretion, the Navy may support the efforts of the Association to investigate *CSS Alabama*, offering in-kind services to the extent they may be available and specific rights to the Association and its sponsors. They

may include, but are not limited to, cooperative and supporting technical assistance in historical and archaeological research, field and laboratory investigations, diving, recovery, transportation, artifact conservation (cf. Para.4), data analysis, exhibition, publishing, communications. These services and/or rights must be mutually agreed to and desired by the Association and the Navy, except those provided in Paragraph 9 below.

7. Specific rights offered by the owner to the Association's sponsors may include, but are not limited to, short and long-term loans of artifacts. In addition to those mentioned in Paragraph 6 above, specific rights offered by the owner to the Association may include, but are not limited to, the use in its own publications, subject to normal scholarly citation, of graphic images (films, photographs and video) and other documentation held in U.S. Navy collections.
8. The Association holds all exclusive property rights over its own collection of photographic and other graphic images, including all such items as it may acquire by purchase or by gifts from individuals, groups or companies. Any photographs or other graphic images provided to the Navy shall be marked as "Proprietary data. Publication without the express permission of the Association CSS *Alabama* is prohibited."
9. The Association may decline specific rights offered by the Navy but accepts to fulfill the following requirements considered by the Navy to be necessary to follow onsite investigations and to protect the fundamental rights of the owner over its property:
 - A. The Association will observe and abide by the terms of the 1989 Agreement, including the possibility offered by Article 7 for both France and the United States to have at least one observer present at excavation operations. The observer(s) may operate either on surface or underwater; in the latter case, his activities will be entirely separate from those of the Association under the conditions prescribed in 9 B below.
 - B. The surface observer(s) is free to witness and photograph from the Association's dive boat all objects as they arrive at the surface and are placed on the boat, and may at will collect graphic images and other data on the surface. He may also obtain from the Association's principal investigator information concerning past and present operations, including

site conditions as they change, to be used solely for reporting to the representative(s) of the owner and to his own employer agency.

The underwater observer(s) may also dive on the wreck site and is free to witness and photograph during such dives, subject to the approval of the director of the archaeological project. Such approval shall normally be given, subject to prior notification by the owner (see paragraph 9 C) and to possible restrictions imposed by weather conditions, safety hazards or regulations, or due to the daily diving and work schedules that are the sole responsibility of the director of the archaeological project. The observer is responsible for obtaining in advance all authorizations required by the French Ministry of Labor for divers qualified to descend to 60 meters. He is also responsible for providing his own means of access to the site and shall not interfere in any way with the actual work underway on the bottom.

The Association and the observer(s) will provide assistance to each other in case of danger.

The owner and his representative are liable for any damage caused by the observer(s), to the extent provided by applicable law. The Association cannot be held liable for any damage caused by the observer(s).

C. The owner and its representatives make the necessary agreements, contracts and arrangements for these and other services.

The owner or its representatives shall provide the Association at least thirty days notice in the case of pending observer visits, and sixty days notice before transport or removal of artifacts in the custody of the Association which are not otherwise subject to existing loan agreements.

D. The conservators of either France or the United States that are funded or contracted by either the Association or the Navy to provide services to the *Alabama* project shall have the right to independently study, analyze, publish or otherwise disseminate technical information on artifact conservation performed on CSS *Alabama* artifacts under their supervision, subject to the terms of their contracts or agreements.

E. As in the past, the Association will continue to provide each French and U.S. representative to the Committee with one copy of its annual report, including the registry of artifacts recovered, with photographs, sketches and any other pertinent information available. If additional copies are required for official purposes by any one of the representatives, they may be made by him at his expense. Annual field reports provided to the Navy shall include a statement that they contain proprietary information and their release is governed by paragraph 10.A

of this present agreement between the United States Navy and the Association CSS *Alabama*.

F. At the conclusion of the Association's study of the CSS *Alabama* and after publication of the archaeologist's findings, or at such point as the project may be otherwise terminated, the Association will, in accordance with French requirements, deposit its documentation in the Département des Recherches Archéologiques Sous-Marines at Marseille and will provide copies to the representative of the owner. The final study provided to the Navy shall include a statement that it contains proprietary information and its release is governed by paragraph 10.A of this present agreement between the United States Navy and the Association CSS *Alabama*.

10. The Navy hereby recognizes that the intellectual property rights of the Association and its principal archaeologist include the following:

A. The Association and its principal archaeologist have the right of first use and publication of their own findings, including methodology and techniques developed during the investigation, the analysis of the site and its contents, and other conclusions reached under their direction. This right of first use and publication shall not exceed ten years from termination of the last season of excavation. The rights of the Association and its principal investigator recognized in this paragraph shall not interfere with the Navy's ability to respond in general terms, preferably by using the Association's press releases, when these are made available to the Navy, to routine press and other inquiries regarding activities at the site and its agreement with the Association. The Navy shall provide copies of any such responses to the Association. All inquiries from archaeologists, historians or other writers, requiring substantial data or other information from any report of the archaeologist shall be referred to him for his response.

B. The Association owns and determines the use of its collection of photographic images of the wreck site, particularly of all the underwater views. It reserves the right to release them to its sponsors, publishers, authors, or the media, to be used for public relations or for other purposes as it sees fit.

C. The Association and its principal archaeologist have the right of first use, study and publication concerning artifacts recovered by the Association from the CSS *Alabama* wreck site, as is compatible with the need for stabilization or conservation of recovered materials. This right shall not interfere with or delay publication or dissemination of technical information on artifact conservation by authorized conservators working

with CSS *Alabama* artifacts in either France or the United States. This right shall not interfere with or timely stabilization and conservation of recovered materials, and, unless justified to the satisfaction of the Navy, this right shall not exceed twelve months from the date of recovery. Extensions may be granted for further study upon the documented request of the archaeologist, if without prejudice to the objects retained.

D. The Navy shall now and in the future prominently credit the Association CSS *Alabama* for funding and accomplishing the recovery of *Alabama* artifacts in all displays or publications concerning them, and shall likewise credit Electricité de France for the conservation treatment of all such objects having been treated in its laboratories. The Association will likewise credit the Maryland Historical Trust for all such objects having been treated in its laboratories, and the U.S. Navy for the conservation treatment that it finances. It will credit the Naval Historical Center for curation and documentation services provided. Both the Navy and the Association shall further require of all repositories receiving traveling exhibitions of *Alabama* objects to observe the same rules.

11. The Navy and the Association recognize that research questions pertaining to archaeological artifacts may arise long after an artifact has been released for transport, conservation or exhibition, or after this agreement has expired. Therefore, both Parties and their designated conservators and curators, shall make reasonable efforts to assist the Association's archaeologist with research inquiries that pertain to *Alabama* artifacts under their management. These efforts shall include artifact photography, visual inspection and communication of findings to the archaeologist. In addition, conservators and curators shall provide for access to the artifacts with reasonable advance notice so that the archaeologist may conduct his own research.
12. The Navy and the Association agree to inform each other of all developments, discoveries, changes of policy, and other factors that affect this agreement and the archaeological investigation of the CSS *Alabama* wreck site.
13. Unless otherwise agreed by both Parties in writing, each Party shall fund its own expenses for activities conducted pursuant to this agreement. All obligations of the Parties under this agreement are subject to national laws, regulations, and the availability of necessary resources or appropriated funds for such activities.

14. This agreement shall be in effect for five years from the date on which it is signed.

It may be amended by mutual agreement of the two Parties.

If circumstances outside the control of either or both Parties should constitute a case of force majeure, or if other imperative reasons should so require, this agreement may be terminated by either Party upon condition 1) that an opportunity for consultation has been offered to the other Party with a view to avoiding premature rupture, 2) that, in case it is decided to pursue premature termination, due notice be given to the other Party, and 3) that the date of termination not become effective until six months after due notice has been given.

The decision for premature termination shall be communicated to the Committee and to the Ministry of Culture of France by the Party responsible for the decision, or by both Parties if so desired.

We the undersigned, having read, understood and accepted the terms of this Agreement, so affix our signatures on duplicate copies, one of which shall be given to each of the signers:

Association CSS *Alabama*
Ulane Bonnel
President of the Association

Signed in Paris on:
8 March 1995

United States of America
William D. Vance
Captain, U.S. Navy
Director of Naval History
acting for the United States Navy
Signed in Washington on:

Attachments:

Exhibit A: Agreement between the Government of the United States of America and the Government of the Republic of France concerning the Wreck of the CSS *Alabama* signed in Paris on 3 October 1989.

Exhibit B: Compte rendu de la reunion du Comité scientifique du CSS *Alabama*, 19-22 octobre 1992.

AMENDMENT TO THE AGREEMENT OF 23 MARCH 1995 BETWEEN THE UNITED STATES NAVY ACTING FOR THE UNITED STATES OF AMERICA, OWNER OF CSS *ALABAMA*, AND THE ASSOCIATION CSS *ALABAMA* RESPONSIBLE FOR ON-SITE ARCHAEOLOGICAL OPERATIONS

The two Parties to the above-mentioned Agreement hereby declare the extension by mutual consent, of the validity of their Agreement of 23 March 1995 for another five year period ending 23 March 2005.

The Association's principal investigator and director of the archaeological project is henceforth the underwater archaeologist Gordon P. Watts, Jr., PhD, of Washington, North Carolina.

We the undersigned, having read, understood and accepted the terms of this Amendment, so affix our signatures on duplicate copies, one of which shall be given to each of the signers:

Association CSS *Alabama*
Ulane Bonnel
President of the Association

Signed in Paris on:

United States of America
William S. Dudley
Director, U.S. Naval Historical Center
acting for the United States Navy

Signed in Washington on:

31 March 2009